

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
United States Department of Justice, Federal Bureau of)	
Investigation and Drug Enforcement Agency)	RM-10865
)	
Joint Petition for Expedited Rulemaking)	

To the Commission:

Reply Comments of:

**THE ARKANSAS, ILLINOIS, IOWA, AND OKLAHOMA RURAL TELEPHONE
COMPANIES**

Atlas Telephone Company
Beggs Telephone Company
Bixby Telephone Company
Canadian Valley Telephone Company
Carnegie Telephone Company
Central Oklahoma Telephone Company
Cherokee Telephone Company
Chickasaw Telephone Company
Cimarron Telephone Company
Cross Telephone Company
Dobson Telephone Company
Egyptian Telephone Cooperative Association
Flat Rock Telephone Cooperative
Hinton Telephone Company
KanOkla Telephone Association, Inc.
McLoud Telephone Company
Medicine Park Telephone Company
Oklahoma Telephone & Telegraph, Inc.
Oklahoma Western Telephone Company
Panhandle Telephone Cooperative, Inc.
Pinnacle Communications
Pioneer Telephone Cooperative, Inc.
Pottawatomie Telephone Company
Salina-Spavinaw Telephone Company
Santa Rosa Telephone Cooperative, Inc.
Scott County Telephone Company
Shidler Telephone Company
South Central Telephone Association, Inc.
Southwest Oklahoma Telephone Company
Terral Telephone Company
Valliant Telephone Company
Van Horne Telephone Company

April 27, 2004

The above-referenced Arkansas, Illinois, Iowa and Oklahoma Rural Telephone Companies (collectively “Rural ILECs”), by and through their attorneys, submit these comments in response to the Federal Communications Commission’s (“FCC”) Public Notice requesting comments on the Joint Petition for Expedited Rulemaking filed by the Federal Bureau of Investigation, the U.S. Department of Justice, and the U.S. Drug Enforcement Agency, (collectively “Law Enforcement”) requesting expedited resolution of issues regarding compliance and implementation of the Communications Assistance for Law Enforcement Act “CALEA”); specifically packet-mode compliance.¹

The Rural ILECs agree that electronic surveillance is an important tool for Law Enforcement to protect the nation from criminal and terrorist activity. The Rural ILECs have complied with the mandate of CALEA as it pertains to the implementation and installation of hardware and software for their central offices for the Section 103, J-STD-025 capabilities and Punch List requirements of the law, and are committed to cooperating with Law Enforcement to deploy the appropriate technology for packet-mode interception. However, the Rural ILECs have concerns regarding Law Enforcement’s proposals contained in their Joint Petition, and their potential affect upon the small rural carriers.

I. THE FCC IS NOT THE PROPER FORUM FOR IMPLEMENTING E911-TYPE CALEA BENCHMARKS

The Rural ILECS agree with those Commenters who stated that the Commission does not have the authority to establish compliance benchmarks and related filings as the Commission did with E911.² CALEA includes specific requirements for carriers to meet in order to obtain an

¹ Public Notice, Comment Sought on CALEA Petition for Rulemaking, RM-10865, DA No. 04-700 (Mar. 12, 2004) (Public Notice.)

² See, e.g., Cellular Telecommunications and Internet Association Comments at 16-18 (hereinafter referred to as “CTIA Comments”); Comments of the United States Telecom Association at 9-11 (hereinafter referred to as “USTA Comments”).

extension. Modifying these requirements to even include the six-month deadline requested by Petitioners is contrary to the Act because it fails to account for whether compliance is “reasonably achievable through application of technology available within the compliance period.”³ Furthermore, the Rural ILECs agree with the Concerned CALEA Compliant Carriers that the Commission should reject Law Enforcement’s proposal to require carriers to file certified statements from their equipment vendors regarding the status of CALEA compliance in the carriers’ networks.⁴ Many of the Rural ILECs sought a packet-mode extension in November 2003⁵ and January 2004 and, due to the fact that the FBI was not utilizing the Flexible Deployment Program, were required to include vendor letters in their extension requests.⁶ Very few of these carriers were able to obtain vendor letters specifically addressed to them, much less letters that specifically referred to the uniqueness of each carrier’s network. If the Commission were to adopt Law Enforcement’s proposal, many, if not all, carriers would be subject to FCC enforcement action simply because their “benchmark” filing failed to include the requisite detailed vendor letter. Clearly, this is contrary to Congress’ intention when it enacted CALEA.

Rather than implementing new requirements for telecommunications carriers or expanding the definition of carriers that are subject to CALEA’s capability requirements, the Rural ILECs recommend that the Commission as well as Law Enforcement first review the current environment and “close” any outstanding issues that may be keeping carriers from complying unintentionally. First, the FBI should finalize the definition of “significant upgrade”

³ 47 U.S.C. § 1006(c)(2).

⁴ See Comments of Concerned CALEA Compliant Carriers at 2.

⁵ These carriers filed for an extension before the Commission issued the *Public Notice* (DA 03-3722, rel. Nov. 19, 2003) extending the filing deadline to January 30, 2004.

⁶ See *Public Notice*, DA 01-2243 (rel. Sep. 28, 2001).

and “major modification” as it relates to CALEA’s exemption for pre-1995 equipment.⁷ Some carriers that have pre-1995 equipment have been reluctant to upgrade such equipment to comply with any of CALEA’s capability requirements because, without knowing what type of upgrade or modification would remove them from being eligible to receive reimbursement for the cost of upgrading their facilities to be CALEA-compliant, they are trying to preserve their eligibility for reimbursement. Furthermore, at a minimum, the Rural ILECs can continue to seek extensions of time to comply with CALEA for any pre-1995 equipment.⁸

The second item the FBI can do to obtain faster implementation of CALEA among carriers is to finalize the capacity requirements. The U.S. Court of Appeals for the D.C. Circuit remanded a portion of the capacity requirements to the FBI in January 2002; however, over two years later, the FBI has yet to issue an Order responding to the remand.⁹ The Rural ILECs’ uncertainty with respect to the capacity requirements relates to their ability to fully comply with the capability requirements because carriers have been told informally by FBI personnel that they must implement a capacity of one in order to comply with the capability requirements. This is in contrast to the statute, which identifies capability and capacity as two separate requirements. Consequently, carriers are seeking something more than “informal” statements from FBI personnel before installing a capacity of one, or more, especially in instances where the carriers have never received a single intercept request.

⁷ To the best of the Rural ILECs’ knowledge, the FBI has not issued anything further on this matter since 2001. See Implementation of Section 109 of the Communications Assistance for Law Enforcement Act: Definitions of “Replaced” and “Significantly Upgraded or Otherwise Undergoes Major Modification,” *Supplemental Notice of Proposed Rulemaking*, 66 Fed. Reg. 194 (Oct. 5, 2001).

⁸ Arguably, carriers do not even need to seek an extension of time for any pre-1995 equipment. However, many carriers do, out of an abundance of caution.

⁹ In December 2003, the FBI requested Comment on proposed rules addressing the Court’s remand. See Implementation of Section 104 of the Communications Assistance for Law Enforcement Act: Final Notice of Capacity; Supplement for the Purpose of Responding to Remand, 68 Fed. Reg. 68112 (Dec. 5, 2003).

Finally, the Commission should clarify what types of telecommunications services are subject to CALEA's packet-mode requirements. In 2001, and again in January 2004, there was considerable confusion among carriers and their equipment vendors regarding what packet-mode services are encompassed in footnote 16 of the Commission's Third Report and Order.¹⁰ Some carriers elected not to seek a packet-mode extension for their DSL service due to confusion regarding whether the Commission's footnote refers to voice and/or data DSL.¹¹

Therefore, for these reasons, simply clarifying and finalizing existing CALEA items might lead to greater compliance among carriers. If further action is still necessary once these steps have been taken, the Rural ILECs agree with USTA that the Commission needs to address the changes requested by Petitioners as part of a rulemaking proceeding and not a declaratory ruling.¹²

II. LAW ENFORCEMENT'S REQUEST IS PREMATURE AND CANNOT BE CONSIDERED PRIOR TO THE FCC DETERMINING AN INDUSTRY STANDARD FOR PACKET-MODE COMPLIANCE AND WHAT ENTITIES ARE SUBJECT TO THE LAW

As set forth above, Law Enforcement is requesting rigorous deadlines and penalties be implemented for packet-mode compliance when a packet-mode solution has not yet been developed. Law Enforcement is attempting to put the cart before the horse. As many commenters have stated, the FCC must first determine which services are covered by CALEA, and then must determine how CALEA obligations will apply to packet-mode technologies.¹³

¹⁰ *In re Communications Assistance for Law Enforcement Act*, Third Report and Order, FCC 99-230 (rel. Aug. 31, 1999).

¹¹ See also, National Telecommunications Cooperative Association Initial Comments at 2. "It is often difficult for carriers to know whether they are covered by CALEA's mandates and if they are, which services they provide must be CALEA capable."

¹² See USTA Comments at 3-4.

¹³ *Id.* at 4.

As SBC Communications, Inc. stated in their comments, Law Enforcement assumes that the development of CALEA packet-mode solutions are within the providers' control.¹⁴ The Rural ILECs agree that this is incorrect. The Rural ILECs purchase equipment and software for the provisioning of packet-mode technologies from various vendors and manufacturers. The Rural ILECs cannot force these manufacturers to develop a packet-mode solution, nor do the Rural ILECs have the time or resources to develop their own solution.¹⁵ Prior to promulgating rules which place compliance deadlines on carriers, a packet-mode solution must first be established, and the entities that must comply must be determined. Furthermore, if this solution does not specify where Carriers need to enable intercepts among the various types of packet-mode equipment used to deliver a single communication, the Rural ILECs recommend that the Commission also clarify this issue.¹⁶ If this is not done, Law Enforcement will almost certainly encounter multiple different intercept solutions among carriers.

III. COSTS FOR CALEA COMPLIANCE SHOULD NOT BE BORNE SOLELY BY THE RURAL CARRIERS AND THEIR CUSTOMERS SERVED IN SPARSELY POPULATED AREAS

Law Enforcement requests that the FCC establish rules that would result in carriers and their customers bearing the sole financial responsibility for the development and implementation of CALEA intercept solutions.¹⁷ Law Enforcement states that since the costs for CALEA compliance would be spread among the carriers' ratepayers, the cost to the

¹⁴ See Comments of SBC Communications, Inc. at 13.

¹⁵ See *also* Comments of Concerned CALEA Compliant Carriers at 4.

¹⁶ For example, carriers are not currently certain whether CALEA requires them to provide access to packet-mode communications at every level of equipment that the subject's communication traverses or only at the highest level, provided that all of the subject's communication can be intercepted at the highest level.

¹⁷ Law Enforcement Petition at 63.

residential ratepayer would be minimal.¹⁸ This statement is incorrect, assumes that rural carriers have a large customer base, and assumes that the cost of compliance is minimal. Contrary to Law Enforcement's assumptions, the small rural carriers have expended hundreds of thousands of dollars to implement CALEA for a few number of customers. As opposed to the large RBOCs which serve hundreds of thousands to millions of customers, the rural carriers' customer base ranges from a few hundred to a few thousand customers. For example, Atlas Telephone Company has 1741 access lines, Cherokee Telephone Company has 5,188 access lines, and Terral Telephone Company has 295 access lines in rural Oklahoma. To date, Cherokee Telephone Company has expended over \$550,000 solely for CALEA compliance for the Section 103, J-STD-025 capabilities and Punch List requirements. Obviously this does not include amounts they may incur for packet-mode compliance and intercepts. Of their current access lines, approximately 4463 of those are residential, and if their residential customers were to bear the cost of CALEA compliance, each customer would pay at least \$125.00, absent additional expenditures for "packet-mode" compliance and intercepts. This is clearly not minimal. The benefits of packet-mode interception will benefit the entire nation, not just residential end-user customers of ILECs. It is inequitable and discriminatory to place the financial burden of CALEA compliance on one class of citizens, and this suggestion should be rejected.

The Rural ILECs concur with USTA's comments that costs should be recovered from the cost causer, and permitting carriers to recover their costs from end-user customers is only one alternative. The Rural ILECs agree with USTA that Law Enforcement should seek

¹⁸ Id. At 66.

Congressional assistance in obtaining funds for CALEA compliance.¹⁹

CONCLUSION

The Rural ILECs realize the importance of Law Enforcement's ability to intercept call content and/or call identifying information as it pertains to packet-mode technology. However, for the reasons set forth above, the request for a declaratory ruling should be denied and appropriate action should be taken to determine what entities are subject to CALEA, and a rulemaking should be instituted for promulgating appropriate rules and standards for CALEA compliance.

Finally, the Rural ILECs look forward to participating to the fullest extent in this proceeding, including the presentation of *Ex Parte* comments to further elaborate on the issues discussed herein.

Respectfully submitted,

RURAL ARKANSAS, ILLINOIS, IOWA AND OKLAHOMA
TELEPHONE COMPANIES

By: _____ /s/
MARY KATHRYN KUNC, OBA #15907
RON COMINGDEER, OBA #1835
KENDALL W. PARRISH, OBA #15039
COMINGDEER, LEE & GOOCH
6011 N. Robinson
Oklahoma City, OK 73118
(405) 848-5534
(405) 843-5688 (fax)

_____/s/
TAMBER RAY
KRASKIN, LESSE & COSSON, LLC
2120 L. Street, N.W.; Suite 520
Washington, D.C. 20037
(202) 296-8890
(202) 296-8893 (fax)

ATTORNEYS FOR THE RURAL ILECS

¹⁹ See Comments of USTA at 12.